IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5853 of 2001

with

SPECIAL CIVIL APPLICATION No 7625 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ZALA GOBARSINH MADHUSINH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5853 of 2001
   MR IS SUPEHIA for Petitioner No. 1-14
   MR KP RAVAL A.G.P. for Respondent No. 1-2
   RULE SERVED for Respondent No. 3-4
2. Special Civil Application No. 7625 of 1999
   MR BG JANI for Petitioner No. 1
   MR KP RAVAL A.G.P. for Respondent No.1-2.
   ..... for Respondent No. 3-4.

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 18/08/2004

ORAL JUDGEMENT

1.0. The petitioners by way of these petitions have prayed for five notional increments pursuant to the Government Resolution dated 8th October, 1970 annexure-B to the petition.

2.0. The short facts as they emerge from the record of the petition are that the petitioners are retired Government servants who have voluntarily retired from the service before 1st January, 1996. It is the case of the petitioners that as per Gujarat Civil Services (R.O.P.) Rules, 1998, (effective from 1st January, 1996), the petitioners are entitled to count their notional period of service for the purpose of regulating their pension and for this notional period, they are entitled for increments. It is further the case of the petitioners that in view of the clarification made vide Resolution dated 9th June, 1999 they are denied the above benefits, which were permissible under the Rules. Hence, this petition

2.1. Mr. Supehia learned advocate appearing for the petitioners submitted that in view of the Statutory Rules, and the Government Resolution, the Government employee is entitled for pensionable service beyond 33 years.

3.0. I have heard the learned advocates for the respective parties and have carefully gone through the record of the petition. The details of each of the petitioners are given by the petitioners themselves at annexure-A to the petition, wherein in column (8) joining date of service and in column (9) period of pensionable service and in column (10) the notional service added for completion of 33 years of service are mentioned.

3.1. Further, it appears that in the case of the petitioners except, one Shri Patel Manilal Madhabhai and one Shri Patel Jivrambhai Narsinhbhai. where both are entitled for five years, in view of the fact that they have served for 24 years and 11 months and 22 years and 9 months respectively, all other petitioners are given maximum permissible period of notional service. In my view, the petitioners have themselves tried to interpret the Government Resolution by saying that they should be given 5 notional increments in addition to the service which they have rendered. Clause-2 makes it clear that

maximum notional increment should be given only keeping in mind the maximum permissible pensionable service on his retirement.

3.2. In my view, the calculation which has been made by the respondents more particularly, from the documents which have been produced by the petitioners clearly establish that the State Government has calculated 33 years of pensionable service which is maximum and, which is permissible under the Rules. Therefore, the petitioners cannot be given notional increment for 5 years beyond permissible limit. In that view of the matter, the petition is misconceived.

3.3. The next contention which was raised by Mr. Supehia is that the petitioners are not given notional increments, but in the affidavit-in-reply filed by the State Government, the Finance Department had made it clear that the petitioners are given all benefits after adding notional period, as permissible under the Rules, and pensionable service has been decided keeping in mind the Government Resolution.

3.4. In that view of the matter, it is very clear that only two petitioners referred in para 3.1. are entitled for the five notional increments. In case of G.M. Zala of Special Civil Application No. 7625 of 1999, excess payment is wrongly granted which is in violation of Rules & Government Resolution. Therefore, the respondents can rectify their mistake and can pass appropriate orders and recover the excess payment made by them.

4.0 In view of the above facts and circumstances, I do not find any merits in the petitions. Accordingly, the petitions are rejected. Rule is discharged with no order as to costs. Interim relief if any, stands vacated.

[K.S. JHAVERI, J.]

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